

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Accessibility of User Interfaces, and Video	)	MB Docket No. 12-108
Programming Guides and Menus	)	
	)	
	)	

**COMMENTS OF CONSUMER GROUPS AND TELCOM-RERC**  
**IN RESPONSE TO NPRM**

**National Association of the Deaf  
Telecommunications for the Deaf and Hard of Hearing, Inc.  
Deaf and Hard of Hearing Consumer Advocacy Network  
Association of Late-Deafened Adults, Inc.  
Hearing Loss Association of America  
California Coalition of Agencies Serving the Deaf and Hard of Hearing  
Cerebral Palsy and Deaf Organization  
Telecommunication-RERC**

The National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), Association of Late-Deafened Adults, Inc. (ALDA), Hearing Loss Association of America (HLAA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO) and Telecommunication-RERC (Gallaudet University and University of Wisconsin) (collectively, the “Consumer Groups and Telecom-RERC”), respectfully submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) May 30, 2013 Notice of Proposed Rulemaking in the above-referenced proceedings.<sup>1</sup>

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<sup>1</sup> *In the Matter of Accessibility of User Interfaces, and Video Guides and Menus*, Notice of Proposed Rulemaking, MB Dkt. No. 12-108 (rel. May 30, 2013) (“NPRM”).

The Consumer Groups and Telecom-RERC seek to promote equal access to telecommunications, including video programming, for the 48 million Americans who are deaf, hard of hearing, late-deafened, or deaf-blind so that they may fully experience the informational, educational, cultural, and societal opportunities afforded by the telecommunications revolution.<sup>2</sup> We applaud the Commission’s important work in adopting rules that implement the closed captioning provisions of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”).<sup>3</sup> These rules represent an important step toward reaching the shared goal of Congress, Consumer Groups, and viewers who are deaf and hard of hearing: to ensure equal access to video programming for all Americans.

The CVAA directs the Commission to mandate access to closed captioning features on both video programming apparatus and navigation devices through a mechanism that is “reasonably comparable to a button, key, or icon” designed for activating the closed captioning features.<sup>4</sup> The Consumer Groups and Telecom-RERC urge the Commission to write these rules to best serve the purpose of the CVAA, which is “to help ensure that individuals with disabilities are able to fully utilize communication services and better access video programming.”<sup>5</sup>

## **I. SUMMARY**

The Consumer Groups and Telecom-RERC support interpreting Section 205 to apply only to navigation devices supplied to subscribers by their multichannel video programming distributors (“MVPDs”) and for Section 204 to apply more broadly, covering other digital apparatus. We support a broad definition of “digital apparatuses” under Section 204 and believe

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<sup>2</sup> A recently released study by Johns Hopkins School of Medicine found that more than forty-eight million Americans over the age of twelve—almost one in every five people in this country—are deaf or hard of hearing. See Amanda Chan, 1 In 5 Americans Has Hearing Loss: Study, THE HUFFINGTON POST (Nov. 15, 2011, 4:38 PM EST), [http://www.huffingtonpost.com/2011/11/15/hearing-loss-americans-one-infive\\_n\\_1095586.html](http://www.huffingtonpost.com/2011/11/15/hearing-loss-americans-one-infive_n_1095586.html).

<sup>3</sup> Pub. L. 111-260, 124 Stat. 2751 (Oct. 8, 2010) (“CVAA”).

<sup>4</sup> The Twenty-First Century Communications and Video Accessibility Act of 2010, PL 111-260, at Sections 204 and 205.

<sup>5</sup> S. Rep. No. 111-386, at 1 (2010)(“Senate Report”)

that stand-alone software should be included. Similarly, MVPD-provided applications and other software should be covered under Section 205. The Commission should require full access to closed captioning control and settings as well as other appropriate functions. The Consumer Groups and Telecom-RERC believe that the best way to ensure access to the closed captioning control and settings is through controls of the same type and relative position as volume controls. We are concerned that the Commission's proposed requirement that closed captioning control be activated in a “single step” is too vague, and will not improve current accessibility problems. If the Commission decides to use the single step standard, it needs to be strengthened and clarified—such as specifying from where the single step must be taken. The Consumer Groups and Telecom-RERC support requiring access to the closed captioning settings in the first level of a menu. Finally, the Consumer Groups and Telecom-RERC believe that users should not be required to request captioning or other visually accessible features on navigation devices.

## **II. THE SCOPE OF SECTIONS 204 AND 205**

### **1. Categories of Devices Covered Under Sections 204 and 205**

The Consumer Groups and Telecom-RERC support the Commission's proposal to interpret Section 205 of the CVAA to apply only to navigation devices supplied to subscribers by their MVPDs and for Section 204 to apply more broadly, covering other digital apparatus.<sup>6</sup> We agree with the Commission that Congress intended for Section 204 to cover everything except MVPD-provided navigation devices that are covered under Section 205. Otherwise, a broad interpretation of navigation devices under Section 205 would render Section 204 largely meaningless.<sup>7</sup>

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<sup>6</sup> NPRM at ¶ 7.

<sup>7</sup> NPRM at ¶ 17.

We support covering a wide array of physical and integrated software as “digital apparatus” under Section 204.<sup>8</sup> However, by adopting the *Advanced Communications Services (ACS) Report and Order* and *IP Closed Captioning Report and Order* definition of “apparatus,” the Commission is effectively excluding third-party software that is downloaded or otherwise added to the device independently by the consumer after the sale.<sup>9</sup> This exclusion fails to recognize Congress' intent to bring equal access to consumers who are deaf or hard of hearing by requiring the technology industry as a whole to design devices and services with accessibility as a cornerstone of the user experience. The Consumer Groups and Telecom-RERC strongly objected to excluding software from the definition of apparatus in our filings in the *ACS* and *IP Closed Captioning* rulemakings as well as a petition for partial reconsideration of the *ACS Report and Order*, and we incorporate those objections by reference here.<sup>10</sup>

## **2. Coverage of MVPD-Provided Applications and Other Software**

The Consumer Groups and Telecom-RERC believe that the accessibility mandates of the CVAA are best served when the Commission requires that MVPD-provided applications as well as other software be considered navigation devices under Section 205. Moreover, coverage under Section 205 mirrors the responsibilities of Video Programming Distributors (“VPDs”) under Section 202(b) which requires VPDs to “ensure that any application, plug-in, or device that they provide to the consumer is capable of rendering or passing through closed captions.”<sup>11</sup> MVPDs are already required to ensure that captions can be displayed on the screens of these

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<sup>8</sup> Section 204(aa)(1); NPRM at ¶ 14.

<sup>9</sup> *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, CG Dkt. Nos. 10-213 & 10-145; WT Dkt. No. 96-198 at ¶ 13 (rel. Oct. 7, 2011) (“*ACS Order*”); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Dkt. No. 11-154 at ¶ 93 (rel. Jan. 13, 2012) (“*IP Closed Captioning Report and Order*”).

<sup>10</sup> *Petition for Reconsideration*, CG Docket Nos. 10-213 & 10-145 and WT Docket No. 96-198 (Jan. 30, 2012).

<sup>11</sup> *IP Closed Captioning Report and Order* at ¶ 27.

devices and similarly should be required to ensure access to the closed captioning control and settings. We urge the Commission to make clear that VPDs who are already required to provide access to closed captioning on applications, plug-ins, and devices must also make them compliant with the Commission's user interface requirements.

### **3. Definition of Digital Apparatus Under Section 204**

The Consumer Groups and Telecom-RERC believe that “digital apparatus” under Section 204 similarly should be interpreted broadly, and as stated above, we strongly object to excluding software from this definition.<sup>12</sup> As we move towards an app-based world, we are seeing more and more video programming available via software downloads. We implore the Commission to avoid repeating the mistakes of implementing overly specific regulations that quickly became dated and left accessibility trailing years behind video programming technology. We wonder how we will be able to access the downloadable online video programming players of the future which we imagine will be available in cars or on our walls at home or work. Nearly everything will be software “apps.” Thus, if a digital apparatus requires a downloaded application to display video programming, the totality of the apparatus with the application should be covered under Section 204.<sup>13</sup>

The Consumer Groups and Telecom-RERC agree with the Commission's reasoning that adding “digital” to “digital apparatus” should not modify the scope of the term.<sup>14</sup> We also agree that the term “designed to” should be interpreted consistently with the *IP Closed Captioning*

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<sup>12</sup> NPRM at ¶ 25.

<sup>13</sup> NPRM at ¶ 27.

<sup>14</sup> NPRM at ¶ 26.

*Report and Order* and *Order on Reconsideration* where the Commission considers the device's functionality, rather than the manufacturer's intent.<sup>15</sup>

### **III. FUNCTIONS THAT MUST BE MADE ACCESSIBLE**

The Consumer Groups and Telecom-RERC support the Commission's proposal that the eleven essential functions recommended by the VPAAC Working Group 4 should be made accessible on devices covered by Sections 204 and 205.<sup>16</sup> However, by no means should the functions covered be limited only to so called “essential” functions. We support the Commission's proposal that “appropriate” functions must be made accessible and that the eleven functions recommended by the VPAAC do not constitute an exhaustive list.<sup>17</sup>

It is especially important that the Commission require both the closed captioning control and the closed captioning settings to be accessible. For closed captioning to be truly accessible, people who are deaf or hard of hearing need to be able to access the captioning control to turn the captions on and off as easily as hearing people can turn the sound on and off (though turning on the captions should never force the audio to be off). People who are deaf or hard of hearing also need to be able to access the closed captioning settings so that we can adjust the caption's color, transparency, size, opacity, font, background color, and opacity as well as the other functions required in the *IP Closed Captioning Report and Order*.<sup>18</sup> Some people who are deaf or hard of hearing, such as those with low-vision, cannot read the closed captions unless the captions are set to a certain size, color, and background.

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<sup>15</sup> NPRM at ¶ 29; *IP Closed Captioning Report and Order* at ¶ 95; *Closed Captioning of Internet-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order on Reconsideration and Further Notice of Proposed Rulemaking, MB Dkt. No. 11-154 at ¶ 6 (rel. June 14, 2013) (“*IP Closed Captioning Order on Reconsideration and FNPRM*”).

<sup>16</sup> NPRM at ¶ 31- 32 and 35-36.

<sup>17</sup> NPRM at ¶ 32 and 36.

<sup>18</sup> *IP Closed Captioning Report and Order* at ¶¶ 111-112.

As technology evolves, we can expect more functions to be added to devices and apparatus, and it is imperative that our access to these new functions must not be restricted. In recent years, we have witnessed a growth in new technologies such as 3D televisions, Internet-connected TVs and video players, and multipurpose devices such as tablets and smartphones. We can only imagine the new kinds of functions that will become available in ever-evolving digital apparatus and navigation devices. For example, we may soon have voice control of televisions and it would be inappropriate if some functions were only accessible to people who can speak aloud. The CVAA, true to its name, requires access to IP-based communication and video programming technologies throughout the twenty-first century and not simply what is available right now. Congress clearly intended for the CVAA to be flexible enough to cover new functions.

The Consumer Groups and Telecom-RERC strongly disagree with exempting non-integrated software from coverage under Section 204.<sup>19</sup> If an MVPD-provided navigation device is downloaded onto a device, it should be covered under Section 205 and must provide easy access to the closed captioning control and settings. Section 205 should not be limited to hardware devices provided by MVPDs as many MVPDs now develop and provide their own software applications to run on hardware developed by third-parties, such as iPhone and iPad apps from traditional cable providers and companies that allow customers to stream video over the Internet. These downloadable navigation devices need to provide easy access to the closed captioning control and settings.

The Consumer Groups and Telecom-RERC support adopting the achievability analysis used in the *ACS Order* and evaluating achievability on a case-by-case basis.<sup>20</sup>

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<sup>19</sup> NPRM at ¶ 33.

<sup>20</sup> NPRM ¶ 39.

#### **IV. ACTIVATING ACCESSIBILITY FEATURES**

There is a long and frustrating history of the difficulties in accessing closed captioning features on apparatus and navigation devices. Most infamously difficult to find, a specific cable box must be first “turned off” before the closed captioning mechanism can be accessed through a special menu feature. The Consumer Groups and Telecom-RERC often hear from people about difficulties accessing the closed captioning controls on televisions, cable boxes, software video players, DVD players, and many other devices. While most of us are able to figure out how to access the controls on the products we own, we often find ourselves struggling to turn on the captions on unfamiliar devices and apparatus such as at a friend's home, in a hotel room, or even trying to help a restaurant owner turn on the captions on a restaurant television. Congress recognized this problem and mandated easier access to the closed captioning features in the CVAA.<sup>21</sup>

##### **1. Activating Closed Captioning Features**

The Consumer Groups and Telecom-RERC believe, as stated in the Consumer Groups's June 2012 comment, that the best way to ensure access to the closed captioning control and settings is through controls that are the same as the volume control in terms of type and comparable position.<sup>22</sup> However, we recognize that some devices and apparatus may not have volume controls and thus the captioning mechanism should be comparable to other primary controls such as arrow keys for menu navigation and play/pause buttons. The Consumer Groups and Telecom-RERC are concerned that vagueness in the rules will leave too much to interpretation by MVPDs as well as those offering devices, and as a result the accessibility goal will not be achieved. The failure of the industry to ensure ubiquitously accessible captioning

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<sup>21</sup> Section 204(aa)(3) and Section 205(bb)(2)

<sup>22</sup> *Comments of Consumer Groups in Response to Public Notice*, MB Docket No. 12-108 at 7 (June 4, 2012).



demonstrates that clear guidelines and rules are necessary to compel accessible captioning controls and settings.

We believe that requiring the closed captioning control to be activated in a “single step” is a vague and unclear standard that simply begs the question: “A single step from where?” Conceivably, it could be a single step after turning off the cable box and entering the menu function, which would defeat the goal of accessibility. Instead, perhaps the rule should say **“to require the closed captioning control to be activated in a single action from all of the same locations from which the volume can be adjusted in a single action, and if the device or apparatus lacks a volume control, then the control should be activated in a single action from all of the same locations from where primary functions are located.”** This definition adds context to the “single step” definition and also recognizes that some devices or apparatus do not have volume controls.

We encourage the Commission to provide several examples for how the closed captioning control should be accessed on different types of products. For instance, on a television, the closed captioning control should be accessible where there are volume buttons—usually on the remote as well as television itself. Some remotes already provide dedicated buttons for the closed captioning control, such as many of those found in hotel rooms.

On devices, where the volume control is an interactive button on the screen, the closed captioning control should be similarly accessible. The web-based YouTube video player is a great example of how the closed captioning control can be made accessible in a software application—the YouTube video player has the volume, mute, play, and closed captioning control all lined up as icons on the bottom of the screen. The closed captioning control is easily identifiable by the “CC” label. All of these controls, including the closed captioning, are also

equally accessible in full-screen mode.

The button, key, or icon that provides access to the closed captioning control must also be clearly marked and easy to find. The Consumer Groups and Telecom-RERC suggest requiring that these buttons be marked with the universal “CC” icon. The accessibility mandates of Section 204 and 205 would not be achieved by providing an unmarked and/or hard to find button, key, or icon that accesses the closed captioning control. Instead, the users need to be able to easily identify the button, key, or icon used to access the closed captioning mechanism.

Moreover, the “CC” button, icon, or key needs to be accessible at all times in the player, such as during advertisements. We have seen situations where software-based “CC” controls are not accessible during opening commercials prior to programs. This means that users cannot activate the closed captioning mechanism in order to watch captioned commercials.

Providing access to the closed captioning control should afford the ability to turn captions off just as easily as they can be turned on.<sup>23</sup> In many cases, people who are deaf or hard of hearing need to quickly turn off the captions—such as to see text on the bottom of the screen that may be blocked by the captioning, such as a baseball game score, or foreign subtitles when somebody onscreen speaks another language. These kinds of visual information displayed onscreen are usually temporary and if it is difficult to quickly deactivate the captions, people who are deaf or hard of hearing will not have a chance to access the visual information obstructed by the captions. This is similar to a hearing person needing to quickly adjust the volume if a program is too quiet to better understand what is being said in a program.

With regards to programmable universal remote controls, the closed captioning control needs to be accessible on the same basis as the volume control. Almost all universal remote controls have dedicated volume buttons that are clearly identified. It would be unreasonable to

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<sup>23</sup> NPRM at ¶ 43.

expect people who are deaf or hard of hearing to program their own remotes in order to set up dedicated closed captioning control buttons. Many people who are deaf or hard of hearing, especially those who are elderly, may not have the technical skills to set it up.

## **2. Activating Other Accessibility Features**

The Consumer Groups and Telecom-RERC support requiring that closed captioning settings (options) be accessible in the first level of a menu of a digital apparatus or navigation device. A great example of this is the web-based YouTube video player. To access the captioning settings on the YouTube player, the user first clicks the “CC” button at the bottom of the screen, then clicks “Settings..., ” and then a box appears which allows users to adjust the closed captioning settings. It is important that access to the closed captioning settings be clearly labeled so that users are able to find it, otherwise accessibility will not be achieved. When the closed captioning settings are buried in menus, it can be extremely difficult to figure out where it is in order to adjust the captions.

## **3. Maximum Flexibility**

The term “maximum flexibility” should be interpreted to best achieve Congress' accessibility goals under the CVAA.<sup>24</sup> As a result, covered entities should be given flexibility in how they customize the closed captioning control and settings mechanism, without sacrificing accessibility. For instance, an entity should be given flexibility as to where on a remote control the button for accessing the closed captioning control is placed, but the entity must provide a clearly labeled button on the remote, otherwise accessibility will not be achieved. The Commission needs to establish clear accessibility standards for the closed captioning control and

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<sup>24</sup> *Senate Report* at 4, " To ensure that user interfaces on digital apparatus and on-screen menus and guides on navigation devices are accessible to individuals with disabilities, the bill would require that each have builtin closed captioning capability. The bill also would require the user interfaces have built-in video description features. In each case, the feature or capability would need to be accessible through a mechanism that is reasonably comparable to a button, key, or icon."

settings, and entities should be given maximum flexibility as long as they provide the legally required level of access to their products.

## **V. MAKING NAVIGATION DEVICES AVAILABLE "UPON REQUEST"**

The Consumer Groups and Telecom-RERC believe that it would be inappropriate to make requests a pre-requisite to providing access to the closed captioning control through a mechanism reasonably comparable to a button, key, or icon on applicable devices. We agree with the Commission that the language in Section 205(b)(3) makes it clear that the “upon request” requirement applies only to blind or visually impaired individuals. Moreover, in Section 205(bb)(2), the closed captioning accessibility language does not include an “upon request” requirement, while there is such a requirement in Section 205(bb)(1) for audible access to MVPD-provided navigation devices.<sup>25</sup> Thus, users who are deaf or hard of hearing should not be required to request captioning or other visually accessible features on navigation devices. Instead, all MVPD-provided navigation devices should provide easy access to the closed captioning control and settings.

While we oppose requiring people who are deaf or hard of hearing to request accessible navigation devices, in the case that the Commission decides otherwise, people who are deaf or hard of hearing should be able to get accessible versions of every navigation device on the market and at the same price hearing people pay. They should not be limited in their choices of navigation devices or charged more for accessible devices. Further, if customers who are deaf or hard of hearing are required to make requests, they should be able to make requests in a variety of ways such as online, over the telephone, and in person. They also should be able to receive their accessible navigation devices within the same time frame that the average customer receives mainstream navigation devices—whether by download, shipment, or on-site installation.

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<sup>25</sup> See Section 205(bb)(1); Section 205(bb)(2); Section 205(b)(3).

Simply providing accessible devices does not ensure access if people who are deaf or hard of hearing have difficulties getting the devices they need, are limited to inferior devices, or are charged extra for accessibility.

## **VI. ENFORCEMENT**

The Consumer Groups and Telecom-RERC support the Commission's proposal to adopt the same complaint filing procedures that the Commission adopted in the IP-closed captioning context.<sup>26</sup> We also support the Commission forwarding complaints to named manufacturers, providers or other appropriate entities for their responses as well as requesting additional information from other entities when appropriate.

However, we note that the FCC Disability Access Complaint Form 200C needs to be updated to reflect complaints related to the accessibility of user interfaces, and video programming guides and menus. The Consumer Groups and Telecom-RERC propose adding a category for these complaints that links to a page with a clear explanation of the rules and examples. We also encourage the Commission to provide access online to each complaint's resolution so that consumers can be more informed about the products they use.

## **VII. EXEMPTION FOR SMALL CABLE PROVIDERS**

The Consumer Groups and Telecom-RERC strongly oppose exempting cable systems serving 20,000 or fewer subscribers from the regulations. People who are deaf or hard of hearing living in rural areas often have fewer choices of video programming providers and for some, a small cable provider may be their only choice. Many people who are deaf or hard of hearing are elderly and may have a harder time accessing complex or hard-to-find closed captioning mechanisms, and they should have the right to access programming in the most optimal manner regardless of the size of the cable provider in their area..

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<sup>26</sup> NPRM at ¶ 55.

Sections 204 and 205 already provide the means to seek exemption from the accessibility obligations to cable providers who may have difficulty making their digital apparatus and navigations accessible under the achievability standard.<sup>27</sup> The tentatively adopted achievability standard, as borrowed from other parts of the CVAA, considers the nature and cost of meeting the accessibility requirements, the technical and economic impact on the entity, the entity's types of operations, and the extent the entity provides accessibility.<sup>28</sup> No evidence shows that small cable providers are any less able to provide access to digital apparatus and navigation devices.

It would be an injustice to deny people with disabilities access to digital apparatus and navigation devices provided by small cable providers when doing so is achievable. The burden will fall most heavily on people with disabilities who live in areas where there are few choices of video programming providers.

## **VIII. TIMING**

The Consumer Groups and Telecom-RERC support the Commission adopting the VPAAC timing recommendations for Sections 204 and 205.<sup>29</sup> These VPAAC recommendations were developed via consensus with support from consumers as well as members of the industry.

## **IX. ELIMINATION OF ANALOG CLOSED CAPTIONING LABELING REQUIREMENT AND RENAMING PART 79**

The Consumer Groups and Telecom-RERC support the Commission's proposal to remove the “analog closed captioning” labeling requirement since all television receivers being sold today are required to implement the features of digital closed captioning.<sup>30</sup> We tentatively support the Commission's proposal to rename Part 79 to “Accessibility of Video Programming” and divide it into two subparts, “Video Programming Owners, Distributors, and Providers” and

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<sup>27</sup> Section 204(a)(aa)(1) and Section 205(a)(bb)(1).

<sup>28</sup> NPRM at ¶ 39.

<sup>29</sup> NPRM at ¶ 58.

<sup>30</sup> NPRM at ¶ 59.

“Apparatus.”<sup>31</sup> However, we urge the Commission to clarify that the change does not affect the underlying substance of the rules, such as the requirement for VPD-provided applications, plug-ins which derive from both proposed subparts.

The Consumer Groups and Telecom-RERC appreciate this opportunity to submit comments in response to this NPRM and stress the importance of making sure that user interfaces on digital apparatus and on-screen menus and guides on navigation devices are fully accessible for individuals with disabilities.

Respectfully submitted,



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<sup>31</sup> NPRM at ¶ 60.

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